



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 17, 2003

Mr. Richard M. Kobdish
Fulbright & Jaworski L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784

OR2003-4171

Dear Mr. Kobdish:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182909.

The Tarrant County Hospital District (the "district"), which you represent, received a request for the names and addresses of all John Peter Smith Health Network staff. You claim that the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim.

Initially, we note that the Public Information Act (the "Act") does not require the district to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); *see also AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied). We also note that a hyper technical reading of the Act does not effectuate the purpose of the Act. *See* Open Records Decision Nos. 497 (1988), 44 (1974). In this instance, we find the submitted request to be a legitimate request for information under the Act. Furthermore, you acknowledge that information responsive to the request exists. Thus, the district must make a good faith attempt to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990).

Additionally, we note that the district has failed to provide this office with a copy of the specific information requested or representative samples of the information within the fifteen business day time period prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental

body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You claim section 552.102 of the Government Code as an exception to disclosure. Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Thus, section 552.102 can provide a compelling reason for overcoming the presumption of openness. However, because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 182909

Enc: Submitted documents

c: Ms. Kaye L. Tipton
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(w/o enclosures)